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August 14, 2019

**VIA ECF**

Conference Date: August 29, 2019

The Honorable Lorna G. Schofield  
United States District Court  
Southern District of New York  
500 Pearl Street, Room 640  
New York, NY 10007

Re: ***Tibor Kiss v. Clinton Green North LLC et al.***  
***Docket No.: 17-cv-10029 (LGS)***  
***Response to Z&Z Service Inc.'s Letter Motion for Summary Judgment***

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Dear Judge Schofield:

We represent the defendant/third party defendant Judy Painting Corp. ("Judy") in the above referenced lawsuit. We write this letter in opposition to Z&Z Service Inc.'s ("Z&Z") letter motion dated August 7, 2019 (ECF # 130).

The right to contractual indemnification depends upon the specific language of the contract. *Trawally v. City of New York*, 137 A.D.3d 492 (1<sup>st</sup> Dept. 2016). "The promise to indemnify should not be found unless it can be clearly implied from the language and purpose of the entire agreement and the surrounding circumstances." *Reisman v. Bay Shore Union Free School Dist.*, 74 A.D.3d 772 (2<sup>nd</sup> Dept. 2010).

While Mr. Jeges testified that the contract was executed a couple months after the subject accident (as discussed in Judy's March 20, 2019 letter to the Court), Z&Z admitted that the agreement was in effect on the day of the accident (September 12, 2017) and that it had been executed prior to the accident (September 11, 2017) when it failed to respond to Judy's F.R.C.P. Rule 36 Notice to Admit, dated June 28, 2018, a copy of which is annexed hereto. Furthermore, the contract was dated September 12, 2017 and the parties dated their signatures to the contract as September 11, 2017, thus evidencing an intent for the contract to apply retroactively. As there appears to be at the very least an issue of fact as to the enforceability of the agreement between Judy and Z&Z, including the indemnification provision contained therein, Z&Z's request to dismiss Judy's contractual indemnification claim should be denied.

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Very truly yours,

WOOD, SMITH, HENNING & BERMAN LLP

By: 

Brendan B. Gilmartin

cc:

RUTA SOULIOS & STRATIS LLP  
*Attorneys for Third Party Defendant*  
*Z&Z Service Inc.*  
211 East 43<sup>rd</sup> Street  
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NEWMAN MYERS KREINES GROSS HARRIS, P.C.  
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LEGAL:10763-0002/12488493.1

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
TIBOR KISS,

Plaintiff,

-against-

No.: 17 Civ. 10029 (LGS)

**NOTICE TO ADMIT**

CLINTON GREEN NORTH LLC, DERMOT CLINTON  
GREEN LLC, AVALONBAY COMMUNITIES INC.,  
JUDY PAINTING CORP., and ABC  
CORP., a fictitious name intending to be that  
of an unknown general contractor,

Defendants.

-----X  
CLINTON GREEN NORTH, LLC,

Third-Party Plaintiff,

-against-

JUDY PAINTING CORP., Z&Z CONSTRUCTION &  
PAINTING, INC., and Z&Z SERVICE INC.

Third-Party Defendants.

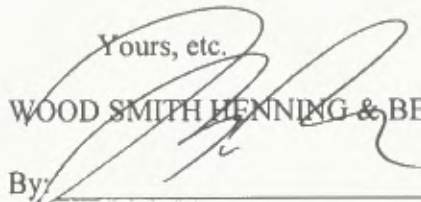
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PLEASE TAKE NOTICE, that pursuant to Rule 36 of the Federal Rules of Civil  
Procedure, defendant/third party defendant JUDY PAINTING CORP., hereby demands that Z&Z  
SERVICE INC. respond to the following Notice to Admit within thirty (30) days:

1. That annexed hereto as **Exhibit A** is a true and accurate copy of the contract between  
Judy Painting Corp. and Z&Z Service Inc., dated September 12, 2017 (hereinafter "Agreement").
2. That pursuant to the Agreement, Z&Z Service Inc. was to perform certain painting  
services at 515 West 52<sup>nd</sup> Street, New York, New York 10019, Unit #North 10A.
3. That the Agreement was executed on September 11, 2017 by Zsolt Jeges.

4. That Zsolt Jeges had authority to execute the Agreement on behalf of Z&Z Service Inc.

5. That the Agreement was in full force and effect on September 12, 2017.

Dated: New York, New York  
June 28, 2018

Yours, etc.  
  
WOOD SMITH HENNING & BERMAN, LLP  
By \_\_\_\_\_  
Brendan B. Gilmartin, Esq.  
*Attorneys for Defendant/Third-Party Defendant*  
Judy Painting Corp.  
685 Third Avenue, 18<sup>th</sup> Floor  
New York, New York 10017  
(212) 999-7103  
File No. 10763.0002

TO:

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211 East 43<sup>rd</sup> Street, 24<sup>th</sup> Floor  
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CLINTON GREEN LLC, and  
AVALONBAY COMMUNITIES INC.  
40 Wall Street  
New York, New York 10005-1335  
(212) 619-4350

**CERTIFICATE OF SERVICE**

I hereby certify that on June 28, 2018, a true and correct copy of the NOTICE TO ADMIT was served by mail to the following:

RONAI & RONAI, LLP  
Holly Ostrov Ronai, Esq.  
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Ruta Soulios & Stratis LLP  
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Linda Westgate